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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219703

DATE: December 17, 1985

MATTER OF: THP Plumbing and Mechanical - Davis-Bacon Act
Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay its employees the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that nonpayment of employees and subsequent falsification of records was intentional. In addition, the record shows that the contractor failed to pay its employees the required prevailing wage rates. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated June 13, 1985, recommended that THP Plumbing and Mechanical (THP) and Travis W. Higgins, individually and as Owner of THP Plumbing and Mechanical, be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For the reasons that follow, we concur with DOL's recommendation, order its implementation, and further order that the funds on deposit with our Office in this matter be distributed to the workers involved.

THP worked as a subcontractor under two separate contracts. Contract No. N62474-79-C-5170 called for work to be done on the Armory air conditioning system at Twenty-nine Palms Marine Base, Twenty-nine Palms, California. Contract No. DAHA04-82-C-0085 called for alterations to be done on Building 453 at March Air Force Base, California. Both contracts were explicitly subject to the Davis-Bacon Act requirement that certain minimum wages be paid. As a means of monitoring compliance with these provisions, and pursuant to 29 C.F.R. § 5.5(a)(3)(ii), THP was required to

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submit weekly payroll records certified to be correct and complete.

The DOL found as a result of an investigation of THP's performance on the two contracts referenced above that THP failed to pay its employees the required prevailing wage rates. In this regard, according to the applicable Wage Decision (No. CA81-5154), employees performing work as plumbers were to receive an hourly rate, including fringe benefits, of \$23.56. Instead, THP paid hourly rates ranging from \$7.50 to \$12.50 with no fringe benefits. Employees performing work as laborers were to receive an hourly rate, including fringe benefits, of \$18.10. Instead, THP paid hourly rates ranging from \$3.50 to \$7.50 with no fringe benefits. The investigation also disclosed that employees did not receive overtime compensation for their hours worked in excess of 8 in a day or 40 in a week. Employees were paid for overtime hours at their straight time rates.

Furthermore, the DOL investigation disclosed that THP submitted certified payrolls for both of these contracts which falsely reflected compliance with the labor standards provisions. The certified payrolls indicated hours worked on the projects that were less than the actual hours worked, and falsely showed the payment of the required prevailing wage rates. THP also failed to list on the certified payrolls the names of all employees who worked on these projects. These payrolls were certified by Travis W. Higgins, the owner of THP, to be accurate and complete.

By certified letter, dated March 25, 1985, the DOL notified THP of the violations with which it was charged, together with an admonition that debarment was possible. Further, THP was given an opportunity for a hearing before an administrative law judge pursuant to 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that THP did not respond. After reexamining the record, the DOL recommended that the names THP Plumbing and Mechanical, and Travis W. Higgins, individually and as Owner of THP Plumbing and Mechanical be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We concur in this recommendation.

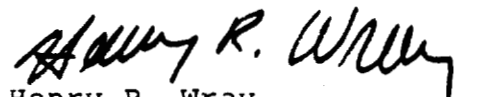
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he finds have

disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2 (1982). In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that THP and Travis W. Higgins, individually and as Owner of THP Plumbing and Mechanical, disregarded their obligations to their employees in that the underpayment of employees was intentional as demonstrated by THP's bad faith in the falsification of certified payroll records. In addition, the record shows that THP failed to pay its employees the required prevailing wage rates.

Therefore, we order that the names THP Plumbing and Mechanical, and Travis W. Higgins, individually and as Owner of THP Plumbing and Mechanical, be included on a list to be distributed to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.

We also order that the funds on deposit with our Office of \$11,074.81 which were withheld for violations under Contract No. DAHA04-82-C-0085 be disbursed to the employees involved on that contract in accordance with established procedures. The prime contractor, Tee Pee Engineering, Inc., has made full restitution to the employees involved on Contract No. N62474-79-C-5170, therefore, no further action on this contract is necessary. In the event that the funds on deposit are insufficient to cover the wages due the workers, the funds available should be distributed on a pro-rata basis among them. S & W General Contractors, Inc., B-217857, August 28, 1985.


Henry R. Wray
Associate General Counsel